

The Commission proposes adoption of a uniform standard for assignment and transfer of CMRS licenses in both Parts and proposes to allow assignment or transfer of most CMRS licenses upon completion of construction and placing of the system in operation, provided that the applicant can demonstrate that the assignment or transfer will serve the public interest, convenience and necessity. <sup>59/</sup> Additionally, the Commission proposes to allow transfer of unconstructed licenses in circumstances where the transaction is involuntary, pro forma, or does not involve a de facto change in control. <sup>60/</sup> The Commission requests comment on whether it should allow the assignment/transfer of unconstructed licenses under other circumstances, and on the conditions it should place on transfer/assignment of wide-area CMRS providers.

In the paging services, the benefits of free transferability outweigh concerns about trafficking. Historically, there has been little evidence of trafficking in these services. In addition, there are few opportunities left for speculators in the major urban markets, which would be most attractive to speculators, as most frequencies are already being used. Under PageNet's proposed Commission defined market area procedures, as well as those that already exist, incumbent licensees on these frequencies would have the first opportunity to build out these frequencies thus excluding speculative filers. Even if a speculator should acquire frequencies in a particular area, his ability to profit from it

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<sup>59/</sup> *Further Notice* at ¶ 144.

<sup>60/</sup> Id. at ¶ 145.

would be minimal as he would have to build it out within a brief period, or lose it and be unable to refile for it. The capital required to build systems, would discourage speculators. <sup>61/</sup> With the advent of awarding newly allocated frequencies through competitive bidding, moreover, the Commission's concerns about trafficking and speculation should drastically diminish, as the speculator's profit from obtaining a valuable license for "free" will be eliminated.

On the other hand, there has been in recent years a pronounced trend of regional consolidation which can require the ability to acquire additional frequencies. Any restrictions on transfers would merely hinder attempts to make companies economically efficient through aggregation of facilities. The Commission, accordingly, should permit free alienation of unconstructed authorizations.

Even if the Commission should decide to generally discourage the transfer of unconstructed facilities, at a minimum, it should expand the enumerated exceptions to include the transfer or assignment of entire companies with unbuilt licenses. There is no reason to prevent mergers or acquisitions merely because the acquired party has an unbuilt authorization. Nor should parties be forced to abandon the unbuilt authorization in order to complete the transaction. Cf. §§ 22.922(a)(2), 22.40(a)(2)(i). Similarly, in this type of acquisition, the Commission should

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<sup>61/</sup> As set forth, supra at n.234, PageNet believes that both "single transmitter applications, and the use of 1 watt transmitters as "placeholders" should no longer be permitted.

permit the acquiring party to amend the other parties' pending applications to substitute the acquiring party as the applicant, without penalty. See, § 22.23(g)(3).

**V. NO SPECTRUM AGGREGATION LIMIT SHOULD BE  
APPLIED TO MESSAGING SERVICES (§§ 86-105)**

The Commission raises the question of whether it should impose a spectrum cap on individual CMRS licensees in a given geographic area. <sup>62/</sup> The basis for seeking comment on such a proposal is the apparent concern that CMRS licensees could acquire excessive market power by obtaining large amounts of spectrum and thereby reduce the number of competing providers. The Commission raises the possibility of such an occurrence in either a specific service category or in CMRS generally. Therefore, the Commission seeks comments on the state of competition in both distinct product and geographic markets and in the CMRS industry as a whole.

PageNet finds no justification whatsoever for imposing any spectrum limitation on individual licensees. As PCIA's Comments filed simultaneously herewith, make clear, there are no public benefits to be governed here that the antitrust laws do not already address.

The concern expressed by the Commission in proposing spectrum caps was possible excessive market power. However, such market power cannot exist if a given market is competitive. The Commission has found on several occasions that the paging market

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<sup>62/</sup> Further Notice at §§ 8, 86-105.

is highly competitive. Most recently, the Commission stated the following:

. . . the paging industry has become increasingly competitive. Allocations of new spectrum, the relaxation of federal and state barriers to entry, and the growth of subscriber demand have resulted in numerous well-financed competing paging entities in virtually every market. These companies compete on the basis of geographic service area, customer service, enhanced services, and price. This highly competitive environment encourages paging carriers to provide an acceptable quality of service or risk losing customers to competitors. 63/

Second, the number of competitors has increased in each local market, with an average of five competing carriers among radio common carriers, 64/ with many having as many as nineteen. 65/ The opportunity for even more competitors exists with the allocation of 2 MHz of narrowband for PCS.

Finally, new technological advances are continuously being introduced in the paging industry, 66/ and other technologies are being introduced that are becoming reasonably substitutable with paging services. 67/

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63/ Notice of Proposed Rule Making and Order in CC Docket No. 94-46, FCC 94-113 (released June 9, 1994). See, Report and Order in PR Docket No. 93-35, 8 FCC Rcd 8318, 8323 (1993).

64/ R. Lane & J. Kealey, Paging Study Shows More Competition and Consolidation, Telocator, October 1992, at 8,10.

65/ Randy Ridley, 1993 Survey of Mobile Radio Paging Operators, Communications, September 1993, at 20.

66/ EMCI, Inc. "The State of the U.S. Paging Industry: 1993," at pp. 147-148.

67/ Id.

Given the vigorous competition that exists in the paging industry and is recognized by the Commission, no basis exists for imposing limitations on the amount of spectrum that individual paging licensees may hold.

## **VI. CONCLUSION**

As set forth above, the use of first-come, first-served, frequency-specific application processes, and resort to Commission defined market areas for 931 MHz frequencies will greatly simplify the Commission's licensing procedures, avoiding the delays and expense inherent in mutual exclusivity. Coupled with outside coordinator services, first-come, first-served licensing will permit 931 MHz applications to be coordinated, and permit licensees to provide service, within days of submitting their applications to NABER. From the perspective of the Commission, consumers and carriers, there is simply no comparable alternative.

Structuring the rules so that every application is treated as a initial application, and thus auctions are lawful under the Budget Act, is no answer.

First, the Budget Act intends the Commission to avoid mutual exclusivity where possible, and for 931 MHz paging it is clearly possible to do so.

Second, the months of processing inherent in mutual exclusivity processes impose unwarranted delays in an applicant's ability to provide service to the public, as well as impose the

unnecessary costs associated with valuation of expansion of facilities.

Third, the Commission is under no obligation to raise revenues by auctions where other means of licensing provide a reasonable method of license allocation.

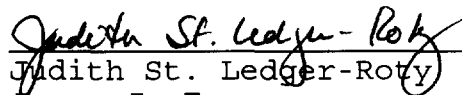
As noted, the rules governing paging at 929 MHz already encompass first-come, first-served processes expedited through the use of coordinator services. These rules, too, could be improved through the adoption of state-wide boundaries instead of regional systems being defined by contours.

In other areas, PageNet recommends the Commission adopt PageNet's proposals, set forth above, to reduce costs imposed on the system operators through unnecessarily restrictive rules, e.g., power limitations should now be uniform at a maximum of 3500 watts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

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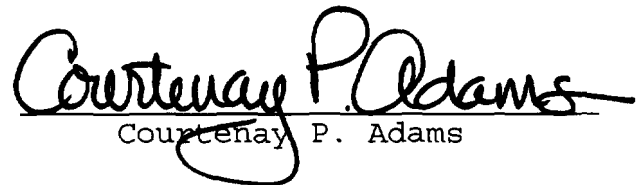
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